IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 565 of 2001()

TA.204/1998 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, THIRUVANANTHAPURAM

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PETITIONER/ASSESSEE:

SMT.B.INDIRA RANI, PROPRIETRIX,
HOTEL PRESIDENT, THIRUVANANTHAPURAM.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENT/REVENUE:

STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
THIRUVANANTHAPURAM.

BY SPL.GOVT.PLEADER (TAXES) MR.V.V.ASOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.565 of 2001

Dated, this the 12h day of June, 2007

ORDER

H.L.Dattu, C.J.

The assessee is running three Bar hotels, namely Hotel President, Hotel Panchavadi and Hotel Panchami at Thiruvananthapuram. For the assessment year 1992-93 the assessee had filed her annual returns. In that she had declared her total and taxable turnover as Rs.1,38,96,782.75 and Rs.7,35,833/- respectively. Since the inspecting authority had conducted inspection in the business premises of the assessee's hotel and since the report of the inspecting officer was available in the records, the assessing authority after rejecting the returns filed by the assessee has fixed the taxable turnover at Rs.42,03,700/-. In the assessment order, the assessing authority has noticed in detail the report of the inspecting officer who had inspected the business premises of the assessee and after rejecting the books of accounts the assessing authority had issued a notice to the petitioner proposing the taxable and total turnover fixed by him. The assessee had filed her reply to the said notice. A perusal of the reply so filed, in our opinion, is not convincing. Keeping that in view, the assessing authority has proceeded to confirm the proposal made by him. The appellate authority in the appeal filed by the assessee has modified the assessment to a little extent. The Tribunal has granted some more relief to the assessee. But not satisfied with the orders so passed, the assessee is before us in this revision petition.

2. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "(i) Was the Appellate Tribunal correct in law in nor holding that the burden of proof is on the revenue which alleged unaccounted purchase and sale and thereby suppression of turnover, in a circumstance where suppressed purchase and sale cannot be that easily presumed when IMFL is exclusively under the Government bondage right from manufacture upto sale?
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> (ii) Whether the Tribunal was correct in not holding that in the absence of multiple inspectioins at the same business premises during the year, a pattern of suppression required for section 17(3) best of judgment assessment cannot be concluded and hence there is no question of addition to the turnover conceded?
>
> (iii) Was the Appellate Tribunal correct in not holding that in the absence of inspection at 'Hotel Panchami' it cannot be held that there is any suppression of turnover especially when IMFL is manufactured and sold in Government bondage?

3. The learned counsel appearing for the assessee would submit that since the purchase of foreign liquor was from the Kerala Biverages Corporation, if there is any suppression of purchase and sales, the burden is on the revenue to prove the same. In aid of his submission, learned counsel has relied upon two overruled decisions of this Court in Lovely Thomas v. State of Kerala [(1999) 113 STC 505] and M/s.Polakulath Tourist Home v. State of Kerala [(2001) 9 KTR 511].

4. Sri.V.V.Asokan, learned Special Government Pleader (Taxes) would bring to our notice a Full Bench decision of this Court in the case of Mary Antony v. State of Kerala (2000 (2) KLT 795). In the said decision the Court has stated as under:

> "Source of unaccounted purchase is within the knowledge of the assessee and it is possible on the part of the Revenue to show as to where from the unaccounted purchases were made. This is a fact which is exclusively within assessee's knowledge. Assessee is required to prove by proper and cogent evidence the source of purchase. The assesssee is entitled to have evidence produced and an inference to be drawn therefrom. There is an essential distinction between 'burden of proof' and 'onus of proof'. Burden of proof lies on the person who has to prove a fact and it

> never shifts, but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In view of the above position in law conclusions in Lovely Thomas's case (1999 (113) STC 505) are not acceptable. If assessee explains the reason why books of accounts were found to be not fully posted, the explanation may be accepted and no adverse inference may be drawn. But if the assessee offers an explanation which is found to be unacceptable or contrary to the material on record, certainly adverse inference can be drawn by the assessing authority to doubt the correctness of the books of accounts. As indicated above, it would depend upon fact situation of the case and no rule of universal application can be laid down."

5. In view of what has been said by the Full Bench of this Court, in our view, the first question of law framed by the assessee requires to be answered in the negative and in favour of the revenue.

6. In so far as the second question of law is concerned, in our view, the Act does not provide for a multiple inspection of the same business premises. Basing on the report of the Intelligence wing of the department, after inspection is conducted in the business premises, the assessing authority has liberty to reject the returns and assess by the best judgment assessment and while doing so, the assessment should not be either biased, or vindictive and unreasonable. The law on the point is again well settled by the apex Court in the case of Commissioner of Sales Tax, Madhya Pradesh v. H.M.Esufali H.M.Abdulali [(1973) 32 STC 77]. In the said decision the Court has observed as under:

> "In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the best judgment assessment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not anyone else's. The High Court cannot substitute its best

judgment for that of the assessing authority."

7. Therefore, the second question also requires to be answered in favour of the revenue and against the assessee.

8. In so far as the third question of law is concerned, the same need not detain us for long. The assessee had obtained only one registration certificate and she is the owner of three hotels. She had filed common returns before the assessing authority. Keeping in view the suppression that was detected by the inspecting wing of the department, the assessing authority has rejected the common returns filed by the assessee. In a case of this nature it cannot be said that merely because the assessing authority had inspected only one business premises of the petitioner, it could not have made any additions on the suppression noticed in the other hotels. In that view of the matter the revision requires to be rejected and it is rejected. Ordered accordingly,

C.M.P.No.6882 of 2001 stands dismissed.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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